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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,409	09/10/2003	Steven P. Hergott	P06668US0-169F	4641
34082	7590	10/08/2004	EXAMINER	
ZARLEY LAW FIRM P.L.C. CAPITAL SQUARE 400 LOCUST, SUITE 200 DES MOINES, IA 50309-2350			PARSLEY, DAVID J	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 10/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/659,409

Applicant(s)

HERGOTT ET AL.

Examiner

David J Parsley

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **Detailed Action**

### ***Amendment***

1. This office action is in response to applicant's amendment dated 8-2-04 and this action is final.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2 and 4-6 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S.

Patent No. 4,577,370 to Kollross.

Referring to claims 1-2 and 5-6, Kollross discloses a method and apparatus comprising, a hollow meat stuffing tube – at 18 and/or 104 and/or 14 and/or 138, on the machine having a first end and a discharge end for extruding emulsion into a natural casing on an outer surface of the stuffing tube, and a textured belt assembly – at 44, 56, 58 or 100,102, mounted adjacent and only above the top surface of the stuffing tube – see for example only the top belt – 44,56,58 or 100,102 in figures 4-8, near the discharge end having a continuous belt – at 44 or 102, with a plurality of grooves – at 56,58 or 132,134, that loops around a pair of rollers – see figures 4a-4e

Art Unit: 3643

and 7-8, wherein the textured belt assembly longitudinally moves the casing about the stuffing tube and towards the discharge end and into the twisting mechanism – proximate 66-68 or 140,142, where it is inherent that the clip at 66 or 142 is twisted about the casing – see for example figures 1-8. Further, see U.S. Patent No. 6,146,261 to Bienert et al., which shows the clipping mechanism – at 22-26 in more detail as a twisting mechanism to twist the clips – at 24 and 26 around the casing.

Referring to claim 4, Kollross discloses one of the rollers is mounted on a fixed axis – at 50, such that the textured belt – at 44 is free to pivot about fixed axle – see figures 4a-4e where the belt pivots about the roller – at 46 and axle – at 50.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kollross as applied to claim 2 above, and further in view of U.S. Patent No. 5,085,036 to Evans. Kollross does not disclose both axles are fixed. Evans does disclose both axles are fixed – see for example figure 4. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Kollross and add the axles being fixed of Evans, so as to allow for the device to be securely held in place during use.

***Response to Arguments***

4. Regarding the 35 U.S.C. 102 (b) rejections using the Kollross reference US 4577370, applicant argues that the twisting mechanism – the clipping device, used in the rejection as set forth above in paragraph 2 of this office action is not a twisting mechanism as known to those of ordinary skill in the art. Applicant offers no specific definition for the term “twisting mechanism” and therefore in taking the claimed invention in light of applicant’s specification the clipping mechanism of Kollross can be used to teach a twisting mechanism. As seen in the Bienert et al. reference US 6146261, a clipping device is used to twist/wind the U-shaped metal clips about the sausage casing to secure the clip to the casing and therefore since it causes the U-shaped metal clip to twist the clipping device is a twisting mechanism. Further, as seen in US 5755022 to Whittlesey and US 4194268 to Deerwester, the twisting/winding of the clips around the sausage casing via the clipping device is shown – see figures 11-12 of Whittlesey and figures 6-9 of Deerwester.

Regarding the 35 U.S.C. 103(a) rejection using Kollross in view of the Evans reference US 5085036, applicant relies upon the arguments to the 35 U.S.C. 102(b) rejections to independent claim 2 and therefore see the response to these arguments above.

***Conclusion***

Art Unit: 3643

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on 9hr compressed.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3643

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DP

David Parsley  
Patent Examiner  
Art Unit 3643

Peter M. Poon

**PETER M. POON**  
**SUPERVISORY PATENT EXAMINER**

10/4/04